
(2012) 11 SHI CK 0054
In the High Court Of Himachal Pradesh
Case No : C.M.P.M.O. No. 279 of 2012

Amrik Singh Alias Amrik Jaijee and Another	APPELLANT
Vs	
Smt. Surinderjit Kaur and Another	RESPONDENT

Date of Decision : 16-11-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 4

Citation : (2013) 2 ShimLC 608

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Advocate : Neeraj Gupta, for the Appellant; V.G. Janhar, Advocate and Mr. I.S. Narwal, for the Respondent

Final Decision : Allowed

Judgement

Dev Darshan Sood, J.—This petition has been preferred by the plaintiff against the order passed by the learned trial Court rejecting permission to the plaintiff to lead evidence in rebuttal. The order notes that the case was listed for rebuttal evidence of the plaintiff when Counsel tendered three affidavits of witnesses; namely; Nonihal Singh, Bahadur Singh and Krishan Dutt. Three other witnesses were also present; namely; Sh. Suraj Prakash, Sh. Ramesh Chand and Sh. Aditya Mahajan. At this stage, it was submitted by the Counsel for defendant Shri V.G. Jauhar that he does not intend to press issue No. 8 with respect to adverse possession. The defendant raised an objection with respect to the relevance of the affidavits. The Court holds that with respect to this objection, it was well founded. The Court notes that in CMPMO No. 148 of 2011, this Court had issued specific directions regarding the manner in which the plaintiff's evidence was to be recorded in the trial stage. The plaintiff was directed to be granted only two opportunities to produce witnesses. The Court then proceeds that the evidence to be led in rebuttal is a ruse to adduce further evidence on these very issues. The application was, thus, rejected.

2. I have heard learned Counsel for the parties.

3. I find from the record that issue No. 8 was given up by the defendant when Counsel had gone through the affidavits of the three witnesses. The learned trial Court then becomes conjectural by holding that the evidence is not relevant as it pertains only to issue No. 8. If that has been the position, it takes no imagination to hold that the evidence should be allowed to be admitted on the record and objections to be dealt with at the final stage in terms of the judgment of the Supreme Court in *Bipin Shantilal Panchal Vs. State of Gujarat and Another*, wherein the Court holds:--

13. It is an archaic practice that during the evidence-collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the Court does not proceed further without passing Order on such objection. But the fall out of the above practice is this: Suppose the trial Court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or revisional Court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the appellate Court would be deprived of the benefit of that evidence, because that was not put on record by the trial Court. In such a situation the higher Court may have to send the case back to the trial Court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings.

(p. 5)

4. Surely if the evidence related to an issue, which had been abandoned, it could have been excluded at the time of the final arguments. To say that this is a ruse to admit additional evidence, is not the correct approach. Both these factors (a) whether the evidence was not relevant and (b) whether it deals with issue No. 8, should be considered at the time of final hearing.

5. Learned Counsel for the respondents relies upon the decision of the Supreme Court in *Shalimar Chemical Works Ltd. Vs. Surendra Oil and Dal Mills (Refineries) and Others*, where the Supreme Court holds that, on the facts therein, serious mistakes were committed at all stages where the trial Court had allowed Xerox copies to be marked as exhibits contrary to the provisions of Order 13 Rule 4 of the Code of Civil Procedure. The Supreme Court held that these exhibits should not have been marked and should have been declined to be taken on the record at all.

6. All that was required in the present case was that the evidence be allowed to be taken on the record and if found at the time of arguments that it goes beyond issue No. 8, it should and ought to be excluded and no part of the evidence read in support of those issues regarding which the plaintiff does not have a right of

rebuttal. This petition is accordingly allowed. Order passed by the learned trial Court is quashed and set aside. The learned trial Court shall proceed with the case afresh by granting an opportunity to the petitioner to place its evidence on the record.